IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5952 OF 2005

The State of Maharashtra ..Applicant
V/s
Shivaji Vithal Phadtare ..Respondent.

Mrs.M.M. Deshmukh, APP for the applicant/State,
Mr. M.S. Mohite, Advocate for the respondent

CORAM : J.H. BHATIA, J.

DATE : 3RD APRIL, 2007.

P.C.

. Heard Mrs. Deshmukh,learned A.P.P for the State and Mr. Mohite, learned Counsel for the respondent. Perused the evidence and the Judgment of the trial Court.

2. The prosecution case, in brief, is that accused/respondent was working as a Clerk in Tahasil Office, Medha, District Satara. On 25 Are of the land belonging to the complainant Shankar Pophale, his Cousin had made encroachment. This fact was revealed during the measurement taken in March, 1997. Therefore, the complainant had approached to Tahasil Office for removal of encroachment and getting back 25 gunthas of land.

Respondent allegedly demanded Rs. 5000/- for Tahasildar and for himself to do the work. However, finally, he agreed to accept Rs. 3000/- for Tahasildar and Rs.500/- for himself for doing the work. As the complainant Shankar was not willing to make the payment he approached Anti Corruption Bureau and lodged a report, on the basis of which the trap was arranged. The complainant Shankar and P.W.2 Damodar Kapshikar, who was panch No.1, approached the accused and the accused asked the complainant whether he had brought the money. On his saying yes, he asked them to come to the hotel, where the accused took a cup of milk, while complainant and P.W.2 took tea. There accusd/respondent made a demand and the complainant handed over the marked notes of Rs. 3500/- to him. Respondent had kept amount of Rs. 3000/- in one pocket and Rs. 500/- in another pocket. Thereafter the complainant gave a signal and remaining members of raiding party came there. The amount of Rs. 3500/- was found in the pockets of the accused and anthracene powder was found on his hands. After investigation charge-sheet was filed.

3. The learned trial Court acquitted the accused in view of several discrepancies in the evidence. It was

noted by the trial Court that there was no talk between the accused and the complainant about the purpose for which the amount was demanded and therefore, panch witness could not say for what purpose the amount was demanded. Though in his complaint and in examination-in-chief the complainant Shankar stated that amount of Rs. 3000/- was demanded for Tahasildar and Rs. 500/- for the accused himself, in the cross-examination he deposed that in fact the amount was demanded as deposit in Small Saving Scheme but he was under the impression that the amount was demanded as a bribe. An application Exh.22 about deposit of Rs. 3500/- in Small Saving Scheme was prepared and was also signed by the complainant. That document was proved in the cross-examination of the complainant. Thus the complainant himself did not support the prosecution that the amount was demanded as bribe. P.W.3 Anil Diggikar, who was the Collector and Sanctioning Authority, admitted in Cross-examination that during the period from April, 1998 to March, 1999 the scheme for investment of funds in Small Saving Scheme was being implemented and he had issued direction to the Revenue Staff to collect the funds for investment in Small Saving Scheme of the Government. In view of this, the

learned Trial Court come to the conclusion that the prosecution had failed to prove that the amount of Rs. 3500/- was demanded by the accused as a bribe. In the result, the accused came to be acquitted.

4. The evidence noted above shows that the complainant himself turned hostile and though initially he had supported the prosecution story, in the cross-examination he supported the defence plea that the amount was taken by the accused for depositing in Small Saving Scheme. The panch witness P.W.2 Damodar was not knowing for what purpose the amount was actually accepted, because there was no talk between the complainant and accused about the purpose for which the amount was demanded. In view of the circumstances, I find that no purpose will be served by granting leave to prefer the appeal. Merely because the Appellate Court may have made a different view about the fact is not sufficient to upturn the order of acquittal, unless it can be pointed that the order of acquittal is perverse, illegal or per se wrong. I do not find any such fault in the judgment of the trial Court.

5. For the aforesaid reasons, leave refused.

Application stands rejected.

(J.H. BHATIA, J.)